

EXHIBIT D

Costs incurred in connection with the making of videos that were submitted as evidence in support of CA's motions for summary judgment of invalidity.
See Local Rule 54.1(c)(6).

Exhibit D

CA is seeking compensation for the vendor fees incurred in making several videos that were submitted as evidence in support of CA's motions for summary judgment of invalidity. This request is made pursuant to Local Civil Rule 54.1(c)(6), which allows compensation for the "[c]osts of maps, charts, and models, including computer generated models" by order of the Court.

Specifically, CA is seeking compensation for the costs of the following videos CA submitted as evidence in support of its motions for summary judgment:

- Exhibits 2 and 4 to the Declaration of Danny Goodman in Support of Plaintiff Computer Associates International, Inc.'s Motion for Summary Judgment of Invalidity of November 8, 2004 ("Technology Tutorial" and "Goodman Demonstration of Prior Art References") *See* attached invoice of December 14, 2004.
- Exhibit 1 to the Declaration of Danny Goodman in Support of Plaintiff Computer Associates International, Inc.'s Objections to the Special Master's Report and Recommendations as to CA's Motion for Summary Judgment of Anticipation of April 20, 2006 ("Mr. Goodman's Supplemental Video Demonstration of Anticipation"). *See* attached invoice of April 28, 2006.
- Exhibit 4 to the Declaration of Danny Goodman in Support of Plaintiff CA, Inc.'s Motion for Summary Judgment of Invalidity Under 35 U.S.C. § 103(a) of September 30, 2008 (video demonstration). *See* attached invoice of September 23, 2008.

In addition, CA is seeking compensation for the costs associated with resubmitting these videos to the Court on an external hard drive as requested by the Court. *See* attached invoice of January 21, 2009.

CA is requesting compensation for the costs paid to the vendors for making the videos, and has not included the fees for the expert who appeared in the videos, which are not taxable. These costs were necessarily incurred in order to prove the asserted patents invalid. The Court relied on at least one of these videos in its Memorandum & Order ruling on CA's motion for summary judgment of anticipation. *See* Docket 829 at 62.

There is a circuit split regarding whether costs incurred in producing visual exhibits, graphics, and videos such as the videos at issue here are recoverable. The Seventh Circuit has held that costs are recoverable for “a wide variety of exhibits and demonstrative aids,” including “maps, charts, graphs, photographs, motion pictures, photostats, and kindred materials.” *Cefalu v. Vill. of Elk Grove*, 211 F.3d 416, 427 (7th Cir. 2000). The Sixth Circuit applies a narrower view, and the Federal Circuit has held that the cost for making an animated video demonstration is not taxable under Sixth Circuit law. *Kohus v. Toys R Us, Inc.*, 282 F.3d 1355, 1360-61 (Fed. Cir. 2002).

CA has been unable to locate authority from the Second Circuit addressing the question of whether videos such as the videos at issue here are taxable. However, CA submits that the Seventh Circuit authority is more persuasive than the Sixth Circuit authority because the Seventh Circuit’s broad approach “allows appropriate room for the more sophisticated types of multi-media presentations made possible by technological advances.” *Cefalu*, 211 F.3d at 428. Particularly in the case of complex patent litigation, such as the present case, video and other graphical evidence can be very important in demonstrating the technology at issue and proving patent invalidity or non-infringement. In the present case, the videos in question were important evidence demonstrating how the asserted prior art websites and computer software actually operated while in use, and this evidence assisted greatly in showing how these references invalidated the asserted patent claims.

Accordingly, CA requests that the Court tax the costs associated with making the videos listed above in the amount of \$60,898.77.

Fulcrum Legal GraphicsInvoice¹

December 14, 2004

Gerard Wissing, Esq.
 Computer Associates International
 One Computer Associates Plaza
 Islandia, NY 11749-7000

Please Remit Payment To:
 Fulcrum Legal Graphics, Inc.
 1035 Post Street
 San Francisco, CA 94109
 (415) 614-3600

Re: Computer Associates International, Inc. v. Simple.Com, Inc., et al.
 Fulcrum File Number: 1025.028

Invoice Period: November 1 to November 30, 2004

Invoice Number: 1791

Professional Services:

Employee Name	Employee Title	Hourly Rate	Non-Taxable		Taxable ³		Total	
			Regular	Overtime ²	Regular	Overtime ²	Hours	Charges
Kevin Hout	President	\$ 280.00	17.50	0.00	5.80	0.50	23.80	\$ 6,889.89
Tim Merrill-Palethorpe	Senior Vice President	\$ 280.00	14.00	2.25	8.00	8.75	33.00	\$ 11,282.78
Nila Staudt	Senior Producer	\$ 160.00	0.00	0.00	1.00	0.00	1.00	\$ 173.60
Steve Haskins	Producer	\$ 150.00	13.25	0.00	3.50	0.75	17.50	\$ 2,740.22
Eric Braun	Producer	\$ 150.00	0.00	0.00	0.25	0.00	0.25	\$ 40.69
Eric Ang	Producer	\$ 140.00	0.00	0.00	0.50	0.00	0.50	\$ 75.95
Lorraine Hemenway	Production Assistant	\$ 80.00	0.00	0.00	3.25	0.00	3.25	\$ 282.10
Peter Holwitz	Senior Graphic Artist	\$ 150.00	8.25	0.00	8.00	0.00	16.25	\$ 2,539.50
Jeffrey Regan	Videographer	\$ 150.00	8.00	0.00	0.00	0.00	8.00	\$ 1,200.00
Darin Holwitz	AVID Editor	\$ 200.00	7.50	0.00	8.00	10.00	25.50	\$ 6,491.00
Darin Holwitz	DVD Author	\$ 125.00	1.00	0.00	0.00	4.00	5.00	\$ 938.75
Jeffrey Reynolds	Computer Animator	\$ 160.00	11.75	0.00	3.25	0.00	15.00	\$ 2,444.20
Piyatida Teerawan	Computer Animator	\$ 160.00	0.00	0.00	0.00	2.00	2.00	\$ 520.80
* Total Tax on Labor: \$1,169.52 \$1,404.22								

Total Charges:

Please see itemized bill for details

Professional Services: \$ 35,619.47
 Production Charges: \$ 3,187.97
 Equipment Rental: \$ 1,457.50
 Expenses: \$ 333.48

TOTAL: \$ 40,598.42¹ Terms: Net 30 days. Overdue accounts subject to 1.5% per month interest charge² Overtime = 1.5 times hourly rate³ Labor on all finished product is subject to 8.5% sales tax per CA State Board of Equalization

Fulcrum Legal Graphics

Itemized Charges

Professional Services		Regular	Overtime	tax
Kevin Hout President				
11/01/04	Video script and animation design	5.50		
11/02/04	Video script and animation design	4.50		
11/03/04	Animation design	4.00		
11/04/04	Tutorial video design	3.50		
11/05/04	Client meeting/ tutorial design/ project coordination	4.00		T
11/07/04	Project coordination/ client teleconference (Sunday)		0.50	T
11/08/04	Project coordination	1.80		T
Total Non-Taxable Hours:		17.50	0.00	
Total Taxable Hours:		5.80	0.50	
Tim Merrill-Palethorpe Senior Vice President				
11/02/04	Coordinate video shoot	0.75		
11/03/04	Video shoot	8.00	2.25	
11/04/04	Prepare and edit video	5.25		
11/05/04	Client meeting/ produce voice over/ edit tutorial	8.00	5.25	T
11/06/04	Revise tutorial edit/ client calls (Saturday)		3.50	T
Total Non-Taxable Hours:		14.00	2.25	
Total Taxable Hours:		8.00	8.75	
Nila Staudt Senior Producer				
11/08/04	Project coordination/ proof graphics	1.00		T
Total Non-Taxable Hours:		0.00	0.00	
Total Taxable Hours:		1.00	0.00	
Steve Haskins Producer				
11/02/04	Graphics design	3.75		
11/03/04	Graphics design and production	6.50		
11/04/04	Graphics design/ review animation	3.00		
11/05/04	Graphics revisions	3.50		T
11/06/04	Create binder (Saturday)		0.75	T
Total Non-Taxable Hours:		13.25	0.00	
Total Taxable Hours:		3.50	0.75	
Eric Braun Producer				
11/08/04	Quality check storyboard content	0.25		T
Total Non-Taxable Hours:		0.00	0.00	
Total Taxable Hours:		0.25	0.00	

Fulcrum Legal Graphics

Itemized Charges

Professional Services (cont.) Regular Overtime taxEric Ang
Producer

11/08/04	Burn and duplicate 8 CDs	0.50		T
Total Non-Taxable Hours:		0.00	0.00	
Total Taxable Hours:		0.50	0.00	

Lorraine Hemenway
Production Assistant

11/05/04	Type timecode/ production assistance	0.75		T
11/08/04	Label 8 CDs and 28 DVDs/ sort 18 sets of story boards and deliver	2.50		T
Total Non-Taxable Hours:		0.00	0.00	
Total Taxable Hours:		3.25	0.00	

Peter Holwitz
Senior Graphic Artist

11/03/04	Graphics production	3.25		
11/04/04	Graphics production	5.00		
11/05/04	Graphics production	1.50		T
11/08/04	Graphics production	6.50		T
Total Non-Taxable Hours:		8.25	0.00	
Total Taxable Hours:		8.00	0.00	

Jeffrey Regan
Videographer

11/03/04	Video shoot	8.00		
Total Non-Taxable Hours:		8.00	0.00	
Total Taxable Hours:		0.00	0.00	

Darin Holwitz
AVID Editor

11/04/04	AVID editing	7.50		
11/05/04	AVID editing	8.00	4.50	T
11/06/04	AVID editing (Saturday)		5.50	T
Total Non-Taxable Hours:		7.50	0.00	
Total Taxable Hours:		8.00	10.00	

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Itemized Charges

Professional Services (cont.)

Regular Overtime tax

Darin Holwitz
DVD Author

11/04/04	DVD authoring/ encoding	1.00		
11/06/04	DVD authoring/ encoding (Saturday)		4.00	T

Total Non-Taxable Hours:	1.00	0.00
Total Taxable Hours:	0.00	4.00

Jeffrey Reynolds
Computer Animator

11/02/04	Animation revisions	3.00		
11/03/04	Animation revisions	5.75		
11/04/04	Animation revisions	3.00		
11/05/04	Animation revisions	3.25		T

Total Non-Taxable Hours:	11.75	0.00
Total Taxable Hours:	3.25	0.00

Piyatida Teerawan
Computer Animator

11/06/04	On call for animation revisions (Saturday)		2.00	T
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Total Non-Taxable Hours:	0.00	0.00
Total Taxable Hours:	0.00	2.00

Production Charges

11/04/04	Dubs: 1 - DVCam master (\$45 each)	\$	45.00	
11/04/04	1 - DVD recording, authored (\$65 each)	\$	65.00	
11/06/04	Dubs: 1 - DVCam master (\$45 each)	\$	45.00	
11/06/04	18 - DVD recordings, authored (\$65 each)	\$	1,269.45	T
11/06/04	MPEG 4 encoding (1 hour @ \$160 per hour)	\$	160.00	
11/06/04	Animation MPEG 4 encoding (.75 hour @ \$160 per hour)	\$	120.00	
11/06/04	Animation edit suite (1.5 hour @ \$40 per hour)	\$	60.00	
11/06/04	2 - BETA-SP tapes (\$41 each)	\$	88.97	T
11/08/04	10 - DVD recordings, authored (\$65 each)	\$	705.25	T
11/08/04	8 - CDs (\$5 each)	\$	43.40	T
11/08/04	18 - Sets of 20 color prints (\$1.50 each)	\$	585.90	T

Total Production Charges:	\$	3,187.97
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Fulcrum Legal Graphics

Itemized Charges

Equipment Rental

11/03/04	DVCam Camcorder with support package	\$	440.00
11/03/04	Scan converter	\$	495.00
11/03/04	DVCam portable VTR	\$	165.00
11/03/04	3 - DVCam videocassettes	\$	99.00
11/03/04	Audio/ high resolution monitors/ light kit/ equipment truck	\$	258.50

Total Expenses: \$ 1,457.50

Expenses

10/28/04	Parking - K. Hout	\$	27.00
11/01/04	Working meal(s) - K. Hout	\$	58.35
11/04/04	Western Messenger delivery	\$	29.73
11/05/04	Western Messenger delivery	\$	42.20
11/06/04	BETA-SP tape deck rental fee	\$	100.00
11/06/04	Western Messenger delivery	\$	55.20
11/08/04	Taxi(s) - L. Hemenway	\$	21.00

Total Expenses: \$ 333.48

Fulcrum Legal GraphicsInvoice¹

April 28, 2006

Adam Bernstein
 Computer Associates International
 One Computer Associates Plaza
 Islandia, NY 11749-7000

Please Remit Payment To:
 Fulcrum Legal Graphics, Inc.
 1035 Post Street
 San Francisco, CA 94109
 (415) 614-3600
EIN: 94-3289857

Re: Computer Associates International, Inc. v. Simple.Com, Inc., et al.

Fulcrum File Number: 1025.028

P. O. Number:

Invoice Period: March 16 to April 18, 2006

Invoice Number: 2106

Professional Services:

Employee Name	Employee Title	Hourly Rate	Non-Taxable Hours	Taxable ³ Hours	Total Hours	Charges
Charles J. Hickey	Senior Producer	\$ 240.00	2.75	0.00	2.75	\$ 660.00
Nila Staudt	Senior Producer	\$ 180.00	17.25	0.00	17.25	\$ 3,105.00
Jeff Reagan	Videographer	\$ 150.00	8.00	0.00	8.00	\$ 1,200.00
Darin Holwitz	AVID Editor	\$ 200.00	11.50	0.00	11.50	\$ 2,300.00
Laura Slate	Graphic Artist	\$ 160.00	0.50	0.00	0.50	\$ 80.00
* Total Tax on Labor: \$0.00						

Total Charges:

Please see itemized bill for details

Professional Services:	\$	7,345.00
Production Charges:	\$	650.00
Expenses:	\$	1,570.92
TOTAL:	\$	9,565.92

¹ Terms: Net 30 days. Overdue accounts subject to 1.5% per month interest charge² Overtime = 1.5 times hourly rate³ Labor on all finished product is subject to 8.5% sales tax per CA State Board of Equalization

Fulcrum Legal Graphics

Itemized Charges

Professional Services		Non-Taxable	Taxable
Charles J. Hickey <i>Senior Producer</i>			
04/11/06	Client teleconference; logistics for video shoot	2.25	
04/12/06	Logistics for video shoot	0.50	
Total Hours:		2.75	0.00
Nila Staudt <i>Senior Producer</i>			
04/12/06	Logistics for video shoot	0.50	
04/13/06	travel; direct video shoot with D. Goodman	8.00	
04/14/06	Direct edit of D. Goodman supplemental video submission	7.75	
04/17/06	Client call re: additional DVDs	0.25	
04/18/06	Coordinate 8 additional DVDs (labels & delivery) to client	0.75	
Total Hours:		17.25	0.00
Jeff Reagan <i>Videographer</i>			
04/13/06	Video shoot of D. Goodman supplemental video submission	8.00	
Total Hours:		8.00	0.00
Darin Holwitz <i>AVID Editor</i>			
04/13/06	AVID editing	2.50	
04/14/06	AVID editing, DVD authoring and production	9.00	
Total Hours:		11.50	0.00
Laura Slate <i>Graphic Artist</i>			
04/14/06	Graphics titles production for video	0.50	
Total Hours:		0.50	0.00

Fulcrum Legal Graphics

Itemized Charges

Production Charges tax

04/14/06	1 - Authored DVD, 2 copies	\$	130.00
04/18/06	8 - Additional DVD copies	\$	520.00

Total Production Charges:	\$	650.00
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Expenses tax

04/13/06	Sony DSR-450WS DVCam Camcorder/ Light Kit/ High resolution monitor/ Audio package/ Folsom Research Scan Converter/ DVCam portable VTR/ Waveform Monitor/ Equipment van	\$	1,330.00
04/13/06	2 - DVCam videotapes @ \$60 each	\$	120.00
04/13/06	Mileage/ working meal(s) - N. Staudt	\$	57.43
04/14/06	Western Messenger delivery	\$	49.99
04/18/06	Western Messenger delivery	\$	13.50

Total Expenses:	\$	1,570.92
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Fulcrum Legal GraphicsInvoice¹

September 23, 2008

Chris Martiniak, Esq.
 Covington & Burling, LLP
 One Front Street
 San Francisco, CA 94111-5356

Please Remit Payment To:
 Fulcrum Legal Graphics, Inc.
 50 Osgood Place, Suite 400
 San Francisco, CA 94133
 (415) 490-3540
EIN: 94-3289857

Re: Computer Associates International, Inc. v. Simple.Com, Inc., et al.
 Fulcrum File Number: 1025.028

Invoice Period: August 1 to August 15, 2008

Invoice Number: 2679-2

Professional Services:^{*}

Employee Name	Employee Title	Hourly Rate	Regular Hours	Taxable ² Hours	Total Hours	Total Charges
Julie Pritchard Wright	Senior Producer	\$ 170.00	16.00	0.00	16.00	\$ 2,720.00
Nila Staudt	Senior Producer	\$ 190.00	4.25	0.00	4.25	\$ 807.50
Jeffrey Regan	Videographer	\$ 150.00	8.00	0.00	8.00	\$ 1,200.00
Darin Holwitz	AVID Editor	\$ 200.00	17.00	0.00	17.00	\$ 3,400.00
Darin Holwitz	Video Editor	\$ 140.00	1.00	0.00	1.00	\$ 140.00
* Total Tax on Labor: \$0.00						

Total Charges:

Please see itemized bill for details

Professional Services: \$ 8,267.50
 Production Charges: \$ 260.00
 Equipment Rental: \$ 1,358.50
 Expenses: \$ 175.73

TOTAL: \$ 10,061.73¹ Terms: Net 30 days. Overdue accounts subject to 1.5% per month interest charge² Labor on all finished product is subject to 8.5% sales tax per CA State Board of Equalization

Fulcrum Legal Graphics

Itemized Charges

Professional Services		Non-Taxable	Taxable
Julie Pritchard Wright			
<i>Senior Producer</i>			
08/29/08	Video production logistics	0.50	
09/02/08	Direct video shoot; editing logistics	6.25	
09/03/08	Direct video editing	3.75	
09/04/08	Direct video editing	2.75	
09/10/08	Direct second draft of edits; burn 2 DVDs	2.75	
		<hr/>	
		Total Hours:	16.00 0.00
Nila Staudt			
<i>Senior Producer</i>			
08/05/08	Video shoot logistics	1.75	
08/25/08	Video shoot logistics; review previous video created	2.00	
08/29/08	Video shoot logistics	0.25	
09/02/08	Video shoot logistics	0.25	
		<hr/>	
		Total Hours:	4.25 0.00
Jeffrey Regan			
<i>Videographer</i>			
09/02/08	Video shoot	8.00	
		<hr/>	
		Total Hours:	8.00 0.00
Darin Holwitz			
<i>AVID Editor</i>			
09/02/08	AVID editing	3.00	
09/03/08	AVID editing	6.00	
09/04/08	AVID editing	4.50	
09/10/08	AVID editing	3.50	
		<hr/>	
		Total Hours:	17.00 0.00
Darin Holwitz			
<i>Video Editor</i>			
09/04/08	DVD authoring	0.50	
09/10/08	DVD authoring	0.50	
		<hr/>	
		Total Hours:	1.00 0.00

Fulcrum Legal Graphics

Itemized Charges

Production Charges

tax

09/04/08	2 - Authored DVDs (\$65.00 each)	\$	130.00
09/10/08	2 - DVDs with MPG's (\$65.00 each)	\$	130.00

Total Production Charges: \$ 260.00

Equipment rental

tax

08/26/08	Sony DSR -450 DVCam	\$	467.50
"	Folsom CGC - 4000 Computer Scan Converter	\$	275.00
"	Sony DSR -45 DVCam Studio VTR	\$	247.50
"	Supply Package with Van, Lighting/ Grip	\$	137.50
"	Panasonic 17" LCD Monitor	\$	82.50
"	Audio Package with Mixer and Tram Mics.	\$	55.00
"	Floro Light Kit	\$	93.50

Total Equipment Rental: \$ 1,358.50

Expenses

tax

08/26/08	Mileage/ parking - J. Regan	\$	65.73
08/26/08	2 - Sony PDV-64N DVCam Videocassette	\$	66.00
09/04/08	Western Messenger delivery	\$	22.00
09/10/08	Western Messenger delivery	\$	22.00

Total Expenses: \$ 175.73

COVINGTON & BURLING LLP

ONE FRONT STREET
SAN FRANCISCO, CA 94111-5356
TEL 415.591.6000
FAX 415.591.6091
WWW.COV.COM

BEIJING
BRUSSELS
LONDON
NEW YORK
SAN DIEGO
SAN FRANCISCO
SILICON VALLEY
WASHINGTON

Ellen D. Chiulos
Senior Paralegal
Tel. 415.955.6839
Fax. 415.591.6091
echiulos@cov.com

January 8, 2009

VIA OVERNIGHT DELIVERY

Mr. Siddharth Fernandes
Law Clerk to the Honorable Denis R. Hurley
United States District Court
Eastern District of New York
Long Island Courthouse
100 Federal Plaza
Central Islip, New York 11722

Re: *CA, Inc. v. Simple.com, et al.*, Case No. 02-cv-2748 (DRH) (MLO)

Dear Mr. Fernandes:

Pursuant to your request, enclosed please find an external hard drive containing the following exhibits previously submitted to the Court on DVD, which we understand cannot be played on the Court's computer:

1. Technology Tutorial - Goodman Declaration Exhibit 2 (dated 11/08/2004);
2. Goodman Demonstration of Prior Art (dated 11/08/2004);
3. Goodman Supplemental Video Demonstration of Anticipation (dated 04/20/2006);
4. Malmer Declaration Exhibit 4 (dated 09/30/2008); and
5. Goodman Declaration Exhibit 4 (dated 10/01/2008).

Please let me know if you have any problems viewing these exhibits using this drive.

Very truly yours,



Ellen D. Chiulos

cc: Joseph Zammit, Esq. (via email; w/o encl.)

Invoice

DATE	INVOICE NO.
1/21/2009	61421

BILL TO
Covington & Burling 1 Front Street, 35th floor San Francisco, CA 94111 Attn: Matt (A/P) 415-591-6000

PLEASE PAY
Teris 333 Bush Street, Suite 400 San Francisco, CA 94104 415-777-4449 Tax ID # 94-3364812

Job Number	Terms		Delivery	Attention	Client Matter
0901701600	Due Upon Receipt	KP	1/21/2009	Ellen Chiulos	032445.00101
Requestor: Ellen Chiulos Case: CAV Simple Re: Copy 3 client provided DVDs to hard drive with folder labeled after source disc and convert into an Mpeg-1 format; place onto 160 gigabyte portable harddrive and deliver					
3.5	Mid-Level Tech Time @ \$120/hour				420.00T
1	ED Deliverables (Hard Drive)				200.00T
	Subtotal				620.00
<i>**Thank You for Your Business**</i>					

Sales Tax (8.5%)	\$52.70
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\$672.70